

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN SENATE JULY 3, 2014

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 985

Introduced by Assembly Member Cooley

February 22, 2013

An act to add Section 38575 to the Health and Safety Code, relating to greenhouse gases, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as amended, Cooley. California Global Warming Solutions Act of 2006: market-based compliance mechanisms.

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum, technologically feasible, and cost-effective greenhouse gas emissions reductions. The act authorizes the state board to include the use of market-based compliance mechanisms.

This bill would require the state board, for any market-based compliance mechanism that the state board might adopt, to allow participating entities to freely sell or transfer greenhouse gas emissions allowances held in a holding account, as defined, or compliance account, as defined, except for allowances that have been expressly retired to meet a compliance obligation, as defined. The bill also would require the state board to require those participating entities to disclose only corporate associations, direct corporate associations, and indirect corporate associations with entities registered with the state board as part of a market-based compliance mechanism and to exclude legal services, as specified, obtained by a participating entity from being disclosed to the state board. The bill would exempt from the Administrative Procedure Act and the California Environmental Quality Act a regulation adopted by the state board pursuant to this act.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The California Global Warming Solutions Act of 2006
- 4 (Division 25.5 (commencing with Section 38500) of the Health
- 5 and Safety Code) was adopted to create limitations on the carbon
- 6 emissions associated with the state's economy. Section 38560 of
- 7 the Health and Safety Code charges the State Air Resources Board
- 8 with the duty of adopting rules and regulations "to achieve the
- 9 maximum technologically feasible and cost-effective greenhouse
- 10 gas emissions reductions from sources or categories of sources."
- 11 (b) One measure that the state board has implemented in
- 12 furtherance of the act is a market-based compliance mechanism.
- 13 (c) For a market-based compliance mechanism to operate
- 14 effectively and allow entities ~~covered by~~ *participating in* the
- 15 market-based compliance mechanism the efficiency and flexibility
- 16 to achieve emissions reductions at the lowest possible cost, the
- 17 market for emissions allowances must promote liquidity while
- 18 also preventing market manipulation.

(d) As part of the market-based compliance mechanism, the state board has adopted a holding limit, placing a limitation on the total number of allowances that any entity participating in the program can hold at one time, subject to certain exceptions. The current holding limit could adversely affect the liquidity and efficiency of the emissions allowance market in that the holding limit functions to require some entities ~~covered by~~ *participating in* the market-based compliance mechanism to surrender instruments for compliance prior to established regulatory compliance deadlines, creating artificial scarcity in the market.

(e) Revising the holding limit to permit entities ~~covered by~~ *participating in* the market-based compliance mechanism to freely transfer allowances from a compliance and holding account to meet their obligations under the market-based compliance mechanism will promote market efficiency and fairness while maintaining the state board's ability to preserve market integrity and prevent market manipulation.

(f) The state board also requires disclosure of a participating entity's affiliation with other entities. As currently structured, the state board requires that participating entities to disclose all of their corporate associates, as defined by the state board, regardless of whether those corporate associates are enrolled in the market-based compliance mechanism. The Legislature finds that this expanded requirement is overly broad, unduly burdensome, and not reasonably necessary to ensure the integrity of the market for emissions allowances.

(g) The state board also requires disclosure of consultants or advisors, as defined by the state board. The Legislature finds that all entities in the state have a right to consult outside legal counsel confidentially, and any requirements to disclose this consultation may put the confidentiality of that consultation at risk and will not promote the purpose of the ~~act~~ *California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code)* or the market-based compliance mechanism.

SEC. 2. Section 38575 is added to the Health and Safety Code, to read:

38575. (a) Any market-based compliance mechanism that the state board might adopt pursuant to this part shall provide for all of the following:

1 (1) (A) Participating entities may freely sell or transfer
2 greenhouse gas emissions allowances held in a holding account
3 or compliance account, except for allowances that have been
4 expressly retired to meet a compliance obligation. This paragraph
5 also applies to allowances held jointly by a group of entities with
6 a direct corporate association.

7 (B) For purposes of this paragraph, the following terms have
8 the following meanings:

9 (i) “Compliance account” means an account created by the state
10 board for an entity participating in a market-based compliance
11 mechanism and that has a ~~compliance obligation~~, *obligation* to
12 which the entity transfers allowances and offsets to meet its
13 compliance obligations.

14 (ii) “Compliance obligation” means the quantity of verified
15 reported greenhouse gas emissions or assigned greenhouse gas
16 emissions for which an entity participating in a market-based
17 compliance mechanism is required to submit compliance
18 instruments to the state board.

19 (iii) “Holding account” means an account created for each entity
20 participating in a market-based compliance mechanism, or a
21 voluntarily associated entity, to hold allowances or offsets.

22 (iv) “Offset” means a greenhouse gas emissions reduction or
23 greenhouse gas emissions removal enhancement verified by the
24 state board that may be used by an entity participating in a
25 market-based compliance mechanism to satisfy a compliance
26 obligation.

27 (2) Participating entities shall disclose only corporate
28 associations, direct corporate associations, and indirect corporate
29 associations with entities registered with the state board as part of
30 a market-based compliance mechanism.

31 (3) Participating entities shall not disclose legal services, or the
32 names of any persons providing legal services, obtained by
33 participating entities.

34 (b) No later than June 30, 2015, the state board shall promulgate
35 a regulation conforming to the requirements of this section. A
36 regulation adopted pursuant to this section shall be exempt from
37 the Administrative Procedure Act (Chapter 3.5 (commencing with
38 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
39 Code) and the California Environmental Quality Act (Division 13
40 (commencing with Section 21000) of the Public Resources Code).

1 *SEC. 3. This act is an urgency statute necessary for the*
2 *immediate preservation of the public peace, health, or safety within*
3 *the meaning of Article IV of the Constitution and shall go into*
4 *immediate effect. The facts constituting the necessity are:*

5 *To address 2014 compliance deadlines imposed by the State Air*
6 *Resources Board pursuant to the California Global Warming*
7 *Solutions Act of 2006 (Division 25.5 (commencing with Section*
8 *38500) of the Health and Safety Code), it is necessary for this act*
9 *to take effect immediately.*